

HAWAII ADMINISTRATIVE RULES

TITLE 16

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

CHAPTER 97

PRIVATE DETECTIVES AND GUARDS

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SUBCHAPTER 1

GENERAL PROVISIONS

§16-97-1 Objective. This chapter is intended to clarify and implement chapter 463, Hawaii Revised Statutes, to the end that the provisions thereunder may be best effectuated and the public interest most effectively protected. [Eff

3/9/64; am 3/9/72; am and ren §16-97-1, 7/30/81; am and comp 2/18/86; comp 8/25/88] (Auth: HRS §463-3) (Imp: HRS §463-3)

§16-97-2 Definitions. As used in this chapter:

"Board" means the board of private detectives and guards.

"Detective" means a person licensed under chapter 463, HRS, and this chapter and who for any compensation or consideration obtains information and evidence not readily or publicly accessible with reference to any of the following matters, notwithstanding the fact that other functions and services may also be performed by the same person for fee, hire, or reward:

- (1) Crime or wrong done or threatened or assumed to have been done or threatened against the government of the United States of America, or any of its states, territories, or possessions;
- (2) The identity, habits, conduct, movements, whereabouts, affiliations, associations, transactions, reputation, or character of any person, association, organization, society, or groups of persons, firms, or corporations;
- (3) The credibility of witnesses or other persons;
- (4) The whereabouts of missing persons;
- (5) The location, disposition, or recovery of lost or stolen property;
- (6) The causes and origin of, or responsibility for, fires, accidents, damage, injuries, or losses to persons, firms, associations, or corporations, or to real or personal property;
- (7) The affiliation, connection, or relation of any person, firm, or corporation with any organization, society, association, or with any official member or representative thereof;
- (8) The conduct, honesty, efficiency, loyalty, or activities of employees, agents, contractors, and subcontractors; or
- (9) The securing of evidence to be used before any investigating committee, board of award, board of arbitration, or in any civil or criminal trial.

The terms do not include any lawful activity of any board, body, commission, agency, state, territory, or possession of the United States, or any political subdivision thereof, or any officer or employee employed solely, exclusively, and singly by an attorney or law firm when engaged in the employer's business; or any person, firm, association, or corporation conducting any investigation solely for its own account.

"Guard" means a uniformed or nonuniformed person who for compensation, reward, or by employment, is responsible for the safekeeping of a client's person and property within contractually prescribed boundaries, and for

observation and reporting relative to the safekeeping of that person or property. This includes companies that respond to alarms by sending out employees or assistants to physically safeguard and secure the premise or property. "Guard" includes individuals, persons, corporations, partnerships, or agencies who provide guard services to associations of apartment owners, provided an employer-employee relationship does not exist between the association of apartment owners and the individual guarding the property. Association of apartment owners means all of the apartment owners acting in accordance with the association's bylaws and declaration.

The term does not include a person employed solely by an employer in connection with the affairs of the employer; nor does it include any lawful activity of any board, body, commission, agency, state, territory or possession of the United States, or any political subdivision thereof.

"Principal detective" means the licensed private detective designated as the detective agency's primary licensee who is fully responsible for the direct management and control of the agency, and for insuring compliance with chapter 463, HRS, and this chapter.

"Principal guard" means the licensed guard designated as the guard agency's primary licensee who is fully responsible for the direct management and control of the agency, and for insuring compliance with chapter 463, HRS, and this chapter.

"Private detective or guard agency" or "agency" means a corporation, partnership, association, or joint-venture engaged in the private detective, investigation, or guard business. [Eff 3/9/64; am 3/9/72; am and ren §16-97-2, 7/30/81; am and comp 2/18/86; comp 8/25/88] (Auth: HRS §463-3) (Imp: HRS §§463-1, 463-3)

§16-97-3 Notification and filing of names, addresses, and changes. (a) Any person holding a license shall file that person's business address with the board and shall notify the board in writing within fifteen days of any and all changes of the person's business address.

(b) The holder of a license to operate a private detective or guard agency shall file with the board the name and address of the business, the name and license number of the principal licensee and, in the case of a partnership, corporation, or association, the names and addresses of the partners, officers, and directors, as the case may be, and shall notify the board in writing of any change of the names, addresses, and license number as the case may be, within fifteen days of the change.

(c) A principal detective or principal guard shall notify the board in writing within fifteen days when the principal detective or guard ceases to be

connected with an agency. [Eff 3/9/64; am and ren §16-97-3, 7/30/81; am and comp 2/18/86; comp 8/25/88] (Auth: HRS §§463-3, 463-10) (Imp: HRS §§463-3, 463-10)

§16-97-4 Display of certificate and license. A certificate evidencing that a license has been issued by the board, together with a copy of the currently valid license, shall be conspicuously displayed in the licensee's place of business. [Eff 3/9/64; am 3/9/72; am and ren §16-97-4, 7/30/81; am and comp 2/18/86; comp 8/25/88] (Auth: HRS §463-3) (Imp: HRS §463-3)

§16-97-5 Renewal of license. Renewal fees paid by mail shall be considered as paid when due if the envelope bears a postmark of June 30 or earlier of each even-numbered year. In addition to the renewal fees, each licensee shall submit, on a form prepared by the board, information relative to conviction of the licensee in any jurisdiction, of a crime which reflects unfavorably on the fitness of the licensee to engage in the profession; any psychiatric or psychological treatment the licensee has or is undergoing, and whether any psychiatric or psychological treatment has been recommended to the licensee. [Eff 3/9/64; am and ren §16-97-5, 7/30/81; am and comp 2/18/86; comp 8/25/88] (Auth: HRS §463-3) (Imp: HRS §463-10)

§16-97-6 Bond. Each applicant shall provide a bond by a surety or sureties licensed by the state insurance commissioner which shall include a provision that the bonding agent shall notify the board in writing at least thirty days prior to any termination of the bond. Termination of the bond shall result in immediate and concurrent suspension of the license and it shall be suspended until a successor bond is filed. [Eff 3/9/64; am 3/9/72; am and ren §16-97-6, 7/30/81; am and comp 2/18/86; comp 8/25/88] (Auth: HRS §463-3) (Imp: HRS §463-12)

§16-97-7 Principal for agency license. (a) No license shall be issued to an agency unless the business thereof is under the direct management and control of a principal guard or principal detective who has been issued a license.

(b) Termination of a principal licensee's connection with an agency for any cause, other than death or accidental disability, shall result in immediate and concurrent suspension of the license and it shall be suspended until a successor principal is appointed and registered with the board. In case of the death or

accidental disability of a principal, the agency shall have thirty days to register a licensed principal or to submit an application for the approval of the license of a new principal. In all cases, an agency shall notify the board in writing within fifteen days of the termination of the principal licensee's connection with the agency.

(c) A guard or private detective shall not serve as principal guard or detective for more than one agency unless that guard or private detective obtains approval from the board. [Eff 3/9/64; am 3/9/72; am and ren §16-97-7, 7/30/81; am and comp 2/18/86; comp 8/25/88] (Auth: HRS §463-3) (Imp: HRS §§463-5, 463-6, 463-8)

§16-97-8 Conflict of interest. (a) A licensee shall not accept employment adverse to a client relating to a matter with respect to which the licensee has obtained confidential information by reason of or in the course of the licensee's employment by the client.

(b) An employee of any law enforcement agency shall not maintain or be eligible for any license issued under chapter 463, HRS. [Eff 3/9/64; am 3/9/72; am and ren §16-97-8, 7/30/81; am and comp 2/18/86; comp 8/25/88] (Auth: HRS §463-3) (Imp: HRS §463-3)

§16-97-9 Doing business as. A licensee shall not solicit business using a name other than the name appearing on the licensee's license. A licensee shall notify the board of any name change within fifteen days of the change. [Eff 3/9/64; am 3/9/72; am and ren §16-97-9, 7/30/81; am and comp 2/18/86; comp 8/25/88] (Auth: HRS §463-3) (Imp: HRS §463-3)

§16-97-10 Unethical conduct. A licensee shall not solicit business for an attorney-at-law or law firm. [Eff 3/9/64; am 3/9/72; am and ren §16-97-10, 7/30/81; am and comp 2/18/86; comp 8/25/88] (Auth: HRS §463-3) (Imp: HRS §463-3)

§16-97-11 Suppression of evidence. A licensee, or a licensee's employee, shall not knowingly suppress any evidence in the investigation of a criminal or civil matter with intent to cause delay, interference, obstruction, or hindrance to the progress of a law enforcement investigation. [Eff 3/9/64; am 3/9/72; am and ren §16-97-11, 7/30/81; am and comp 2/18/86; comp 8/25/88] (Auth: HRS §463-3) (Imp: HRS §463-3)

§16-97-12 Office. Each licensee shall be required to maintain an office in the state and designate a person who may receive service of process. [Eff 3/9/64; am 3/9/72; am and ren §16-97-12, 7/30/81; am and comp 2/18/86; comp 8/25/88] (Auth: HRS §463-3) (Imp: HRS §463-3)

§16-97-13 Identification. A licensee shall not use or permit any employee to use a vehicle in the performance of the licensee's duties that is painted in a manner or bears any emblem, insignia, or design that may be mistaken for, or resembles that of any law enforcement vehicle. Each licensee shall include the licensee's license number on any advertising. Advertising shall include, but is not limited to the issuance of any card, sign, or device to any person, or any printed or visual communication which includes but is not limited to advertisements contained in newspapers, telephone directories, pamphlets, direct public mailings, and television or radio communications. [Eff 3/9/64; am 3/9/72; am and ren §16-97-13, 7/30/81; am and comp 2/18/86; comp 8/25/88] (Auth: HRS §463-3) (Imp: HRS §§463-3, 463-11)

§16-97-14 Uniforms, badges, identification, emblems. (a) No licensee shall use or adopt for use any uniform, badge, identification, or emblem unless the uniforms, badges, identifications, or emblems have been approved by the board.

(b) No licensee shall wear or permit any employee to wear any uniform, badge, identification, or emblem similar in design as that of any government law enforcement agency.

(c) Each licensee shall submit to the board the following:

- (1) An eight inch by ten inch photograph showing the full length front view of the uniform with cap worn by the licensee's employees; and
- (2) A three inch by five inch photograph, sufficient to show detail, of the emblem, badge, and identification card, if any, used to identify the licensee's employees.

Every licensee shall submit to the board one photograph of each of the above for board records in addition to a sufficient number of photographs for each of the county police departments in which the licensee plans to do or is doing business. The board shall forward the photographs to the appropriate county police department. [Eff 3/9/72; am and ren §16-97-14, 7/30/81; am and comp 2/18/86; comp 8/25/88] (Auth: HRS §463-3) (Imp: HRS §§463-3, 463-11)

§16-97-15 Registration of employees. (a) A licensed guard, private detective, or agency may employ as many agents, operatives, assistants, guards, and employees as necessary for the conduct of business, provided that the principal guard or principal detective of the agency shall be held responsible for the acts of those employees while the employees are acting within the scope and purpose of the licensee's business.

(b) A licensed guard, detective, or agency shall not employ any person who has been convicted in any jurisdiction of a crime which reflects unfavorably on the fitness of the person to engage in the profession, unless there has been an order annulling or expunging that convicted person's sentence.

(c) Every detective or guard agency or licensee shall register with the board within fifteen days of hire, the names and addresses of all employees doing any type of investigation and guard work and within fifteen days shall notify the board in writing of any and all changes.

(d) Every detective or guard agency or licensee shall provide the board with a statement for each employee doing any type of investigation or guard work, indicating that employee's criminal history background and psychiatric or psychological history has been verified. [Eff 3/9/72; am and ren §16-97-15, 7/30/81; am and comp 2/18/86; comp 8/25/88] (Auth: HRS §463-3) (Imp: HRS §§463-3, 463-6, 463-8)

§16-97-16 Powers and duties of private detectives and guards; standards of conduct. (a) Arrest. In accordance with section 803-3, HRS, private detectives or guards shall have the authority to arrest, without a warrant, anyone in the act of committing a crime.

(b) Stop and frisk. A private detective or guard, for good cause, may stop and frisk any person found on the premises which are being guarded if based on the private detective or guard's observation of the person to be frisked, or other reliable information, the private detective or guard suspects that a crime has been or is about to be committed.

(c) Interrogation. No private detective or guard shall interrogate, question, or in any way abuse the civil rights of a person arrested, detained, or found on the premises which are being guarded. Any person properly arrested shall be immediately turned over to the appropriate governmental authorities. [Eff 3/9/72; am and ren §16-97-16, 7/30/81; am and comp 2/18/86; comp 8/25/88] (Auth: HRS §§463-3, 803-3, 803-4) (Imp: HRS §463-3)

§16-97-17 Carrying of weapons prohibited. Private detectives or guards shall not carry firearms, blackjacks, batons, night sticks, or other weapons unless

specifically authorized in writing by the chief of police in the county or counties in which the private detective or guard is doing business. [Eff 3/9/72; am and ren §16-97-17, 7/30/81; am and comp 2/18/86; am and comp 8/25/88] (Auth: HRS §463-3) (Imp: HRS §463-3)

§16-97-18 Payment for services. A private detective or detective agency shall not collect a fee without providing a service. Service means conducting an investigation and, at the option of the licensee's client, providing a written or oral report of the investigation. At the client's option, the report shall be provided within thirty days of the conclusion of the investigation. A licensee shall not knowingly submit to a client a false or untruthful report. [Eff and comp 2/18/86; comp 8/25/88] (Auth: HRS §463-3) (Imp: HRS §463-3)

SUBCHAPTER 2

APPLICATIONS

§16-97-25 Forms and instructions. An application filed with the board shall be prepared in accordance with and contain the information called for in the application form provided by the board and any instructions which may be required by the board with respect to the filing. The following forms are currently in use by the board:

- (1) Application for private detective or guard examination and license;
- (2) Application for private detective or guard agency license;
- (3) Application for reinstatement of expired license;
- (4) Application to be licensed as a joint venture;
- (5) Application to act as principal guard or principal detective for more than one agency;
- (6) License renewal application; and
- (7) Medical release statement.

The forms may be modified from time to time as required. [Eff 3/9/64; am 3/9/72; am and ren §16-97-25, 7/30/81; am and comp 2/18/86; comp 8/25/88] (Auth: HRS §463-3) (Imp: HRS §463-9)

§16-97-26 Applications for examination and oral review for private detective, guard, or agency license. (a) A completed application for examination and license shall be submitted at least thirty days prior to the next regularly scheduled board meeting and shall be accompanied by the required fees. The

executive secretary of the board shall determine the sufficiency of the preliminary qualifications of applicants for admission to examination.

(b) Each application for a private detective or guard license shall include at least the following information:

- (1) Name;
- (2) Social security number;
- (3) Date of birth;
- (4) Current residence and former residences over the last ten years;
- (5) Present and prior occupational history covering ten years including reason for job changes and dates of employment;
- (6) Education;
- (7) Trade name;
- (8) Arrest and conviction history; and
- (9) Psychiatric history.

(c) Each agency application shall identify the agency seeking the license and shall include the following information as to each general partner, in the case of a partnership, or as to the president and vice-president in the case of a corporation:

- (1) Identifying information, including name, social security number, date of birth, current and former residence addresses over the last ten years;
- (2) Employment information, including business or occupations engaged in for ten years immediately preceding the date of filing of the application, names and addresses of employers, dates of employment, and reasons for change of employment, business, or occupation; and
- (3) Arrest and conviction history.

(d) The applicant for a private detective or guard license shall take and pass an examination and personally appear before the board for an oral review concerning the applicant's application. The principal for any agency shall appear before the board for an oral review concerning the agency's application which is under consideration for a license. Based upon the oral review and other information which is before the board, the board may grant or deny the application for license.

(e) The general partner or at least one corporate officer listed on the agency application shall personally appear before the board for an oral review concerning the application. This requirement may be waived in cases where the partner or corporate officer has previously appeared before the board or where their appearance is a hardship due to travel from out-of-state.

(f) The board may approve an application subject to requirements the applicant shall meet before a license is issued.

(g) Nothing in this section shall limit the board's authority to investigate an applicant's character, background, competency, integrity, experience, and past and future method of doing business as may be deemed necessary in order to pass upon the applicant's qualifications.

(h) The applicant shall submit the required bond before a license is issued. [Eff 3/9/64; am 3/9/72; am and ren §16-97-26, 7/30/81; am and comp 2/18/86; am and comp 8/25/88] (Auth: HRS §463-3) (Imp: HRS §463-2, 463-3, 463-9)

§16-97-27 Application for reexamination. An application for reexamination shall be filed at least thirty days before the examination. [Eff 3/9/64; am 3/9/72; am and ren §16-97-27, 7/30/81; am and comp 2/18/86; comp 8/25/88] (Auth: HRS §463-3) (Imp: HRS §§463-2, 463-3)

§16-97-28 Application for agency license; joint venture. (a) An application for private detective or guard agency license shall be accompanied by the required fee which shall not be refunded.

(b) Each agency shall maintain an office in the State of Hawaii which shall be under the direct management and control of a licensed principal detective or licensed principal guard.

(c) Each agency branch office shall be required to have a responsible full-time manager.

(d) A licensed private detective, guard, or agency may associate with another licensee by forming a joint venture. The joint venture shall apply for an agency license and shall file with the board a certified copy of the joint venture agreement.

(e) A corporation, partnership, or joint venture shall be allowed not more than one private detective or guard agency license.

(f) The applicant shall submit the required bond before a license is issued. [Eff 3/9/64; am and ren §16-97-28, 7/30/81; am and comp 2/18/86; comp 8/25/88] (Auth: HRS §463-3) (Imp: HRS §§463-3, 463-9)

§16-97-29 Denial of application. (a) In the event the board denies an application for the issuance of a license or for the reinstatement of a license, the board shall notify the applicant by letter of the board's action which shall include a concise statement of the reasons for denial or refusal to reinstate and a statement

informing the applicant of the applicant's right to a hearing if the applicant so desires.

(b) Inaccurate or false information submitted by an applicant shall be sufficient grounds for denial of a license.

(c) Conviction in any jurisdiction of a crime which reflects unfavorably on the fitness of the applicant to engage in the profession including, but not limited to crimes involving felonious injury to persons or property, provided that the sentence has not been annulled or expunged by court order, shall be sufficient grounds for denial of a license. An applicant, however, may, be permitted to present evidence to the board as to why such conviction should not be the basis for denial of a license such as the age of the conviction, exceptional circumstances surrounding the crime, or the completion of a course of rehabilitation which substantially diminishes the likelihood of further criminal behavior.

(d) No license shall be granted to applicants who have engaged in or who are engaging in any illegal or unlawful conduct which reflects unfavorably on the fitness of the applicant to engage in the profession including, but not limited to crimes involving felonious injury to persons or property.

(e) The board may deny issuance of a license if, after investigation, the applicant's background, character, competency, and integrity is found to be detrimental to the profession or to the best interest of the public.

(f) The board may deny issuance of a license if the applicant is found to have undergone psychiatric or psychological treatment or if any treatment has been recommended for any psychiatric or psychological disorder which may be detrimental to the profession. An applicant may, however, be permitted to present to the board a statement signed by the attending physician, psychologist, or psychiatrist attesting to the applicant's mental and emotional fitness to engage in the profession.

(g) The board may deny issuance of a license when the applicant is known to have committed any of the acts for which a license may be suspended or revoked under section 16-97-46. [Eff 3/9/64; am and ren §16-97-29, 7/30/81; am and comp 2/18/86; am and comp 8/25/88] (Auth: HRS §463-3) (Imp: HRS §463-3)

§16-97-30 Demand for hearing. Any person whose application for a license or reinstatement of a license has been denied by the board, shall be entitled to a hearing pursuant to chapter 16-201, provided that a demand for hearing is filed with the board within sixty days of the date of mailing of the letter informing the applicant of the denial of the application. [Eff 3/9/64; am and ren §16-97-30, 7/30/81; am and comp 2/18/86; comp 8/25/88] (Auth: HRS §463-3) (Imp: HRS §463-3)

§16-97-31 Abandonment of application. If an applicant fails to secure a license within one year after filing the application, or fails to take the examination within a one-year period after becoming eligible to take the examination, the application shall be considered abandoned and all fees shall be forfeited. An application submitted subsequent to the abandonment shall be considered as a new application. [Eff and comp 2/18/86; comp 8/25/88] (Auth: HRS §463-3) (Imp: HRS §463-9)

§16-97-32 License required for bids. A license is required for any individual or entity who submits bids in order to secure a contract which involves providing guard or private detective services. [Eff and comp 2/18/86; comp 8/25/88] (Auth: HRS §463-3) (Imp: HRS §463-3)

§16-97-33 License not transferable. No license issued under chapter 463, HRS, shall be transferred, assigned, or loaned. [Eff and comp 2/18/86; comp 8/25/88] (Auth: HRS §463-3) (Imp: HRS §463-3)

SUBCHAPTER 3

VALIDATION REQUIREMENTS

§16-97-34 Educational requirements. The board may accept any of the following:

- (1) Certified copy of high school diploma or certificate of graduation;
- (2) Certified transcript of high school record;
- (3) A statement from the department of education that the applicant possesses the equivalent of a high school education; or
- (4) Other certified documentation that the applicant has a high school education. [Eff 3/9/64; am and ren §16-97-34, 7/30/81; am and comp 2/18/86; comp 8/25/88] (Auth: HRS §463-3) (Imp: HRS §463-3, 463-6)

§16-97-35 Experience requirements. Applicants shall have had experience reasonably equivalent to at least four years of full-time investigational or guard work. The board may accept the following types of experience:

- (1) For persons applying to be private detectives, employment:

- (A) Under the supervision of a licensed private detective;
 - (B) As a police officer with a police department of a state or political subdivision thereof;
 - (C) As an investigator with any federal, state, county, or municipal government agency; or
 - (D) As an investigator by an attorney-at-law or law firm.
- (2) For persons applying to be guards, employment:
- (A) Under the supervision of a licensed guard;
 - (B) As a guard by a private employer;
- (C) As a police officer with a police department of a state of political subdivision thereof; or
- (D) As a guard with any federal, state, county, or municipal government agency. [Eff 3/9/64; am and ren §16-97-35, 7/30/81; am and comp 2/18/86; comp 8/25/88] (Auth: HRS §463-3) (Imp: HRS §§463-3, 463-6, 463-8)

§16-97-36 Identification. Applicants shall provide a recent photograph of themselves, showing only their head and shoulders, and being approximately two-and-a-half inches square. [Eff 3/9/64; am and ren §16-97-36, 7/30/81; am and comp 2/18/86; comp 8/25/88] (Auth: HRS §463-3) (Imp: HRS §463-9)

§16-97-37 Fingerprint cards and criminal history background. (a) An applicant for a private detective or guard license shall submit with the application a completed fingerprint card. The applicant shall bear the cost of the fingerprint processing. The application shall not be considered complete until the card has been processed.

(b) An applicant for a private detective or guard license and general partners or corporate officers listed on an agency application for a license shall submit with the application a criminal history background covering the last ten years immediately preceding the date of the application, completed by the police, sheriff's department, or criminal justice data center where the applicant resided during that ten year period. The criminal history background shall include all arrests or convictions other than for traffic violations. [Eff and comp 2/18/86; am and comp 8/25/88] (Auth: HRS §463-3) (Imp: HRS §§463-3, 463-6, 463-8, 463-9)

§16-97-38 Psychiatric or psychological disorders. Applicants for a private detective or guard license shall provide the board with:

- (1) A signed medical release which authorizes the board to check into the applicant's psychiatric or psychological background;
- (2) The names of at least two personal physicians, psychologists, or psychiatrists that have seen the applicant within the past five years;
- (3) Any information concerning the applicant's treatment for any psychiatric or psychological disorder; and
- (4) Information describing any treatment for a psychiatric or psychological disorder that was recommended, but not completed. [Eff and comp 2/18/86; comp 8/25/88] (Auth: HRS §463-3) (Imp: HRS §§463-6, 463-8)

§16-97-39 Occupational and employment history; notarization. Each applicant for a private detective or guard license and each general partner or corporate officer listed on the agency application shall submit on a form provided by the board, a notarized statement covering the applicant's occupational and employment history for the ten years immediately preceding the date of application. [Eff and comp 2/18/86; am and comp 8/25/88] (Auth: HRS §463-3) (Imp: HRS §463-9)

SUBCHAPTER 4

EXAMINATION

§16-97-40 Written. The written examination for private detective or guard shall include questions on the laws, rules, knowledge, and skills, which specifically apply to the holder of a private detective or guard license, as the case may be. [Eff 3/9/64; am and ren §16-97-40, 7/30/81; am and comp 2/18/86; comp 8/25/88] (Auth: HRS §463-3) (Imp: HRS §463-3)

§16-97-41 Passing score. A grade of not less than seventy-five per cent shall be a passing score for the examination. [Eff 3/9/64; am and ren §16-97-41, 7/30/81; am and comp 2/18/86; comp 8/25/88] (Auth: HRS §463-3) (Imp: HRS §463-3)

SUBCHAPTER 5

ORAL TESTIMONY

§16-97-42 Oral testimony. (a) The board shall accept oral testimony on any item which is on the agenda, provided that the testimony shall be subject to the following conditions:

- (1) Each person seeking to present oral testimony shall so notify the board not later than forty-eight hours prior to the meeting, and at that time shall state the item on which testimony is to be presented;
- (2) The board may request that any person providing oral testimony submit the remarks, or a summary of the remarks, in writing to the board;
- (3) The board may rearrange the items on the agenda for the purpose of providing for the most efficient and convenient presentation of oral testimony;
- (4) Persons presenting oral testimony shall, at the beginning of the testimony, identify themselves and the organization, if any, that they represent;
- (5) The board may limit oral testimony to a specified time period but in no case shall the period be less than five minutes, and the person testifying shall be informed prior to the commencement of the testimony of the time constraints to be imposed; and
- (6) The board may refuse to hear any testimony which is irrelevant, immaterial or unduly repetitious to the agenda item on which it is presented.

(b) Nothing in this section shall require the board to hear or receive any oral or documentary evidence from a person on any matter which is the subject of another proceeding pending subject to the hearings relief, declaratory relief or rule relief provisions of chapter 16-201.

(c) Nothing in this section shall prevent the board from soliciting oral remarks from persons present at the meeting or from inviting persons to make presentations to the board on any particular matter on the board's agenda. [Eff and comp 2/18/86; comp 8/25/88] (Auth: HRS §463-3) (Imp: HRS §92-3)

SUBCHAPTER 6

LICENSE SUSPENSION AND REVOCATION

§16-97-45 REPEALED. [R 2/18/86]

§16-97-46 Grounds for suspension, revocation, and refusal to renew a license. Failure of any licensee to comply with chapter 463, HRS, or this chapter shall be grounds for suspension, revocation, or refusal to renew the license after a hearing, pursuant to chapter 16-201. In addition, the following shall be grounds for suspension, revocation, or refusal to renew the license:

- (1) Any dishonest, fraudulent, or deceitful activity which causes substantial damage to a licensee's client;
- (2) Unfair or deceptive acts or practices as prohibited by section 480-2, HRS;
- (3) The abandonment of a contract or project without a reasonable or legal excuse;
- (4) The diversion, misappropriation, conversion, or concealment of a client's funds or property;
- (5) Conviction in any jurisdiction of a crime which reflects unfavorably on the fitness of the licensee to engage in the profession, provided the sentence has not been annulled or expunged by court order and provided that licensees may present evidence to the board as to why any conviction of a crime should not be the basis for suspension, revocation, or refusal to renew a license;
- (6) Failure to keep proper business records of a client's account or to maintain possession and custody of property entrusted to a licensee by a client;
- (7) Advertising by means of false and deceptive statements or by statements which tend to deceive or defraud;
- (8) Any use by an agency of an unlicensed person to directly manage the agency;
- (9) Impersonation of a police officer or member of any law enforcement agency by the licensee or licensee's employee;
- (10) Misrepresentation of any material fact in connection with the submission of employee registration information to the board;
- (11) Failure to maintain a current surety bond as required under section 463-12, HRS;
- (12) Misrepresentation of a material fact by an applicant in obtaining a license;

- (13) Providing false information to a client with respect to any surveillance or security project;
- (14) Misrepresenting a material fact, on any investigative, surveillance, or security report;
- (15) Soliciting business for an attorney or law firm;
- (16) Failure to submit a completed license renewal application form when due;
- (17) Engaging in any illegal or unlawful conduct which reflects unfavorably on the fitness of the licensee to engage in the profession including, but not limited to crimes involving felonious injury to persons or property;
- (18) Found to have undergone psychiatric or psychological treatment or if any treatment has been recommended for any psychiatric or psychological disorder which may be detrimental to the profession, provided that licensees may present statements signed by the attending physician, psychologist, or psychiatrist attesting to the licensee's mental and emotional fitness to engage in the profession;
- (19) Failing to include the license number on any advertising; or
- (20) Failure in any material respect to comply with chapter 463, HRS, or this chapter. [Eff and comp 2/18/86; comp 8/25/88] (Auth: HRS §463-3) (Imp: HRS §463-2)

§16-97-47 Board jurisdiction to proceed. The lapsing or suspension of a license by operation of law, or by order or decision by the board or a court of law, or the voluntary surrender of a license by a licensee shall not deprive the board of jurisdiction to proceed with any investigation of or action or disciplinary proceeding against the licensee, or to render a decision suspending or revoking the license. [Eff and comp 2/18/86; comp 8/25/88] (Auth: HRS §463-3) (Imp: HRS §§463-2, 463-3)

SUBCHAPTER 7

PRACTICE AND PROCEDURE

§16-97-50 Administrative practice and procedure. The rules of practice and procedures for private detectives and guards shall be as provided in chapter 16-201, the rules of practice and procedure of the department of commerce and consumer affairs which are incorporated by reference and made a part of this chapter. [Eff and comp 2/18/86; am and comp 8/25/88] (Auth: HRS §91-2) (Imp: HRS §91-2)

Amendments to and compilation of chapter 16-97, Hawaii Administrative Rules, on the Summary Page dated April 14, 1988, were adopted on April 14, 1988, following a public hearing held on April 14, 1988, after public notice was given in the Honolulu Star-Bulletin and Honolulu Advertiser on March 20, 1988.

They shall take effect ten days after filing with the Office of the Lieutenant Governor.

/s/ Calvin C. Fujita
CALVIN C. FUJITA, Chairman
Board of Private Detectives and Guards

APPROVED AS TO FORM: Date: 7/25/88

/s/ Winfred K.T. Pong
Deputy Attorney General

APPROVED: Date: 8/2/88

/s/ Robert A. Alm
ROBERT A. ALM
Director of Commerce and Consumer Affairs

APPROVED: Date: 8/15/88

/s/ John Waihee
JOHN WAIHEE
Governor of Hawaii

August 15, 1988
Filed

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

Amendment and Compilation of Chapter 16-97
Hawaii Administrative Rules
April 14, 1988

SUMMARY

1. §16-97-17 is amended.
2. §16-97-26 is amended.
3. §16-97-29 is amended.
4. §16-97-37 is amended.
5. §16-97-39 is amended.
6. §16-97-50 is amended.
7. Chapter 97 is compiled.